IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 295 of 2000

in

COMPANY PETITIONNo 157 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BABUBHAI & BROS.

Versus

O.L.OF ARYODAYA GNG.& MFG.CO. LTD.

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Appearance:

1. COMPANY APPLICATION No. 295 of 2000

MR SN SOPARKAR for Petitioner No. 1

..... for Respondent No. 1

MR RM DESAI for Respondent No. 2

NOTICE SERVED for Respondent No. 2,3-5

SINGHI & BUCH ASSO. for Respondent No. 4

MR DS VASAVADA for Respondent No. 6

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 13/08/2002

ORAL JUDGEMENT

The applicant was a tenant of Aryodaya Ginning & Mfg. Co. Ltd. (in liquidation) and has prayed that the Official Liquidator be directed to accept a cheque for Rs. 8,100/- towards rent for the period commencing from 1.7.87 till 31.12.2000 and the Official Liquidator should continue to receive rent from time to time from the applicant.

2. It has been submitted by the applicant in an affidavit filed by him that the applicant was given a premises bearing Municipal Census No. 621/11 at a monthly rent of Rs. 50 by the company in liquidation. As the premises, which was used by the applicant, had been completely destroyed due to communal riots, which had taken place in 1992, the applicant had left the premises and had not paid any rent thereafter, but by virtue of this application he has prayed that the Official Liquidator be directed to accept the rent as the applicant still continues to be a tenant of the company in liquidation.

3. Learned advocate Mrs. Soparkar has submitted that even if the premises, which was occupied by the applicant has been destroyed, the relationship between the applicant and the company in liquidation as tenant and landlord still subsists and the applicant has a right as a tenant and, therefore, the Official Liquidator is bound to accept the rent because the applicant is a tenant. She has referred to some portion of the judgment delivered by the Hon'ble Supreme Court in the case of Vannattankandy Ibrayi v. Kunhabdulla Hajee, (2001) 1 SCC 564 to show that the applciant should be treated as a tenant.

4. Learned advocate Shri M.B. Buch appearing for the secured creditor has submitted that the Official Liquidator cannot be directed to accept the amount of rent because the applicant is no longer a tenant of the company in liquidation. The Official Liquidator has also submitted that the applicant is no logner a tenant now and therefore he should not be directed to accept the amount of rent from the applicant. He has also submitted that the applicant had not given any amount by way of rent since 1.7.1987.

5. At an earlier point of time it was doubtful whether the applicant was ever a tenant but it has been now submitted by the learned advocate appearing for the applicant with the help of some old rent receipts that the applicant was a tenant of the company in liquidation in the past.

6. The question to be decided is whether the Official Liquidator can be directed to accept the amount of rent though the applicant is not residing at the place since 1992 and the premises which was occupied by the applicant has been completely demolished.

7. Looking to the law laid down by the Hon'ble Supreme Court in the case of Vannattankandy Ibrayi (supra), it is clear that in a case of lease covered under the provisions of sec. 108 of the Transfer of Property Act, subject to the provisions of the said section, if by fire, tempest or flood, or violence of any army or of a mob, or other irresistible force, any material part of the property is wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void. Thus, only in a case where a lease is given under the provisions of the Transfer of Property Act, the lessee gets an option whether to terminate the contract of tenancy or not. The Supreme Court has observed that this would not be the case in a problem governed by the State Rent Act. The Supreme Court has observed in para 20 of the said judgment that in a case where the tenanted premise is destroyed completely and where the land has not been given on lease and the relations are governed under the provisions of the State Rent Act, the lessee shall not have any right to continue as a tenant.

8. Looking to the above position, in my opinion, the Official Liquidator cannot be directed to accept the rent because the applicant cannot be treated as a tenant especially in view of the fact that the learned advocate appearing for the applicant could not show any provision of law under which the tenancy still continues.

The application is therefore rejected. Notice is discharged with no order as to costs.

(A.R. Dave, J.)

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